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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,878	09/28/2001	Joe A. Rodriguez	LM(F)5616	3587

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EXAMINER

FREJD, RUSSELL WARREN

ART UNIT PAPER NUMBER

2128

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,878

Applicant(s)

RODRIGUEZ, JOE A.

Examiner

Russell Frejd

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Examination of Application #09/965,878

1. Claims 1-4 and 6-20 of application 09/965,878, filed on 28-September-2001, are pending in the application. This communication is in response to applicant's amendment received 20-June-2006, in which claim 5 was cancelled.

Claim Rejections under 35 U.S.C. § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2.1 Claims 1-4, 6-8, and 16-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The invention claims (claim 1 preamble): "A computer-implemented method for communication within a network."

2.2 MPEP Section 2106(IV)(B)(2)(b)(ii) provides that a statutory computer process is determined not by how the computer performs the process, but by what the computer does to achieve a practical application with a useful, concrete and tangible result. For example, a computer process that simply calculates a mathematical algorithm that models noise is nonstatutory, while a claimed process for digitally filtering noise employing the mathematical algorithm is statutory. The long line of cases in this area that are referred to in MPEP Section 2106(IV)(B)(2)(b)(ii) exemplify this requirement, by utilizing in the claim language, terms such as controlling, executing, changing and removing. In view of the aforementioned requirement and the interim guidelines for 101 subject matter eligibility, the Examiner respectfully contends that

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the claim language of independent claims 1 and 16, do not claim a practical application or provide a useful, concrete and tangible result, that language claiming: (In regard to claim 1)

transmitting a data packet as a broadcast signal;

transmitting the data packet as a point-to-point signal;

transmitting the data packet as a broadcast signal; and

simulating war games between two remote geographic sites.

2.3 For at least these reasons, the Examiner respectfully posits that claims 1-4, 6-8, 16 and 17 of the present invention do not meet the criteria for a statutory process. Accordingly, the claims are determined to be computer executable software code, or a program per se, consisting of a computer program product having software instructions that implement the method for communication within a network, whereby the method does not manipulate appropriate subject matter, and thus cannot constitute a statutory process (MPEP Section 2106(IV)(B)(2)(c)).

2.4 In view of the aforementioned requirement, the Examiner respectfully contends that the claim language of claims 18-20 do not claim a practical application, that language claiming a computer program product having software for communication within a network. The computer program product is determined to recite data embodied on a computer-readable medium. However, the data does not impart functionality to either the data as claimed or to the computer. As such, the claimed invention recites non-functional descriptive material, *i.e.*, mere data. Non-functional descriptive material is merely carried on the medium, it is not structurally and

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functionally interrelated to the medium, and thereby does not manipulate, or execute, appropriate subject matter, and thus cannot constitute a statutory process (MPEP Section 2106(IV)(B)(2)(c)).

Claim Rejections under 35 U.S.C. § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.1 Claims 9-15 and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Arsikere et al., hereinafter Arsikere, USP 6,424,653.

3.2 Arsikere disclosed the invention as claimed, including communicating over computer networks, comprising:

In regard to claim 9, a first device (i.e. computer, col. 2, line 11) for transmitting a data packet as a broadcast signal from a first application node of a first subnetwork to a first gateway node of the first subnetwork [col. 2, lines 11-27];

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a second device for transmitting the data packet as a point-to-point signal from the first gateway node to a second gateway node of a second subnetwork [col. 2, lines 11-27];

a third device for transmitting the data packet as a broadcast signal from the second gateway node of the second subnetwork to at least one application node of the second subnetwork [col. 2, lines 28-35]; and

the broadcast signals each comprising an Ethernet Protocol Data Unit [col. 1, lines 45-54; col. 2, lines 56-67; col. 4, lines 51-52; col. 6, lines 25-35].

3.3 In regard to claims 10, 11, 13, 15 and 18-20, the limitations of these claims were discussed in the rejection of claim 9, pertaining to the disclosure in Arsikere, and are therefore considered rejected for the reasons as set forth above.

3.4 In regard to claims 12 and 14, the limitations of these claims, while not specifically taught by Arsikere, are nonetheless deemed inherent to communicating over computer networks as disclosed by Arsikere.

Allowed Claims

4. Claims 1-4, 6-8, 16 and 17 are deemed allowable over the present prior art of record, pending resolution of any rejections noted above, and any subsequent prior art search.

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Response Guidelines

5. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

5.1 Any response to the Examiner in regard to this non-final action should be

directed to: Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, **or** the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

mailed to: Commissioner of Patents and Trademarks
P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to: (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

Date: 16-October-2006



**RUSSELL FREJD
PRIMARY EXAMINER**